

U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Washington, DC 20001-8002

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Issue Date: 19 August 2003

BALCA Case No. 2002-INA-238
ETA Case No. P2002-PA-03370836

In the Matter of:

THE FOUNDATION OF HUMAN SERVICES,
Employer,

on behalf of

SUKHJIT SINGH,
Alien.

Certifying Officer: Richard E. Panati
Philadelphia, Pennsylvania

Appearance: Pro Se

Before: Burke, Chapman and Vittone
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. This case arose from an application for labor certification on behalf of Sukhjit Singh (“Alien”) filed by The Foundation of Human Services (“Employer”) pursuant to 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. §1182(a)(5)(A) (the “Act”) and Title 20, Part 656 of the Code of Federal Regulations (“C.F.R.”). The Certifying Officer (“CO”) of the United States Department of Labor denied the application, and Employer requested review pursuant to 20 C.F.R. § 656.26. The following decision is based on the record upon which the CO denied certification and Employer’s request for review, as contained in the Appeal File (“AF”) and any written arguments of the parties.

STATEMENT OF THE CASE

On February 23, 2001, Employer filed an application for labor certification on behalf of the Alien for the position of Community Organization Worker. (AF 16-17).

On April 8, 2002, the CO issued a Notice of Finding (NOF) indicating intent to deny the application on the ground that Employer's foreign language requirement was unduly restrictive. The CO advised Employer that it could rebut the CO's finding by establishing that the foreign language requirement was a business necessity. The CO required that as a minimum Employer had to provide specific details about Employer's business, including the total number of clients served and the percentage of those people who could not communicate in English. Additionally, the CO posed questions about the percentage of time the worker would use the language, how Employer previously dealt with non-English speaking clients, and questions requiring specific details about Employer's business which would support the foreign language requirement under the business necessity doctrine. Alternatively, the CO informed Employer that it could delete the language requirement. (AF 12-13).

In its Rebuttal dated May 2, 2002, Employer asserted that a significant portion of its business was conducted in the foreign language. Employer asserted that according to a rough but careful estimate over 200,000 Indian immigrants live around the Philadelphia area and more than 20,000 Indian immigrants live in the Delaware Valley, which is where Employer is located. The percentage of business that is dependent on the language is 85% and the worker would use it 75% of the time. Employer could not afford to use translating services and it previously used volunteers -- but they were not reliable. Additionally, the worker would have to be familiar with the Indian traditions and culture. Employer submitted a three page document, titled Profile of Activities, in support of its argument. (AF 7-11).

On May 9, 2002, The CO issued a Final Determination (FD) denying certification. (AF 4-6). The CO found that Employer's Rebuttal consisted of undocumented assertions which were insufficient to support Employer's language requirement as a business necessity. Additionally, Employer did not explain how the number of Indian immigrants residing in the general area of Employer relates to Employer's business. As Employer's language requirement was in violation of 20 CFR § 656.21(b)(2), Employer's application was denied.

On June 10, 2002 Employer filed a Motion for Reconsideration in which Employer deleted the foreign language requirement. (AF 2). If the Motion for Reconsideration was not granted, Employer submitted a Request for Review also dated June 10, 2002. (AF 1), where Employer indicated its willingness to submit additional evidence.

On June 26, 2002 the CO issued a response to Employer's Request for Reconsideration denying the Request as it did not address any issues that could not have been addressed in the Rebuttal. (AF 3).

The AF does not reflect that a brief was filed.

DISCUSSION

Under 20 C.F.R. § 656.26(b)(1), a request for review shall be in writing and shall clearly identify the particular labor certification determination from which review is sought, and shall set forth the particular grounds for the request. It is well established that where the request for review does not set forth specific grounds for review and no brief is filed, the request for review will be dismissed. *North American Printing Ink Co.*, 1988-INA-42 (Mar. 31, 1988)(en banc); *Bixby/Jalama Ranch*, 1988-INA-449 (Mar. 14, 1990); *Rank Enterprises, Inc.*, 1989-INA-124 (Nov. 13, 1989); *The Little Mermaid Restaurant*, 1988-INA-489 (Sept. 1, 1989).

Employer did not file a brief, and in its Request for Review it did not allege a single ground for this Panel to review. Employer limited its Request for Review to assertions that if allowed to appear before the Board it would explain its position and would provide additional evidence. However, general statements of disagreement with the CO do not constitute an assignment of error and such a request for review will be dismissed. *GCG Corp.*, 1990-INA-498. *See also Ajem Thread Rolling*, 1990-INA-412 (May 20, 1991).

Consequently, for the above stated reasons we dismiss Employer's Request for Review and affirm the CO's Denial. Accordingly, the following order will enter¹:

ORDER

The CO's denial of labor certification in this matter is hereby **AFFIRMED**.

Entered at the direction of the Panel by:

A

Todd R. Smyth
Secretary to the
Board of Alien Labor Certification Appeals

¹ We note that another ground for affirming the CO's denial is Employer's failure to document its business necessity for the foreign language requirement. The burden of proof, in the twofold sense of production and persuasion, is on the Employer. *Cathay Carpet Mills, Inc.*, 1987-INA-161 (Dec. 7, 1988) (*en banc*). The Employer bears the burden in labor certification both of proving the appropriateness of approval and ensuring that a sufficient record exists for a decision. 20 C.F.R. § 656.2(b); *Giaquinto Family Restaurant*, 1996-INA-64 (May 15, 1997). Employer failed in its obligation to prove its case by limiting its Rebuttal to making self-serving and undocumented assertions that it required someone who spoke Hindi and Punjabi. Unsupported conclusions are insufficient to demonstrate that certain job requirements are normal for a position, or are supported by a business necessity. *Inter-World Immigration Service*, 1988-INA-490 (Sept. 1, 1989); *Tri-P's Corp.*, 1988-INA-686 (Feb. 17, 1989) (*en banc*). Denial of certification has been affirmed where the employer has made only generalized assertions, *Winner Team Construction, Inc.*, 1989-INA-172 (Feb. 1, 1990). In the Rebuttal, Employer was provided an opportunity to justify its foreign language requirement. However, Employer wasted that opportunity by failing to provide the details requested by the CO in the NOF and by failing to document its need. Employer's last opportunity to supplement the factual issues of the case is in the Rebuttal. 20 C.F.R. §656.24. Therefore, it is the employer's burden at that point to perfect a record that is sufficient to establish that a certification should be issued. *Carlos Uy III*, 1997-INA-304 (Mar. 3, 1999) (*en banc*). Accordingly, Employer's failure to document its business necessity for the foreign language requirement is another ground for denial of certification.

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW, Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five, double-spaced, typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.